(2000) 11 OHC CK 0016

In the Orissa High Court

Case No : O.J.C. No. 4555 of 1994

Durga Films and Traders (P) Ltd. APPELLANT

Vs

District Magistrate-cum-Collector, Cuttack and others RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Cinemas (Regulation) Act, 1954 — Section 3, 4, 5, 7
Orissa Cinemas (Regulation) Rules, 1964 — Rule 15, 15(1), 15(2), 15(3), 24

Citation : (2001) 91 CLT 132

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : M/s Y. Das, N.C. Mohanty and A.N. Patnaik, for the Appellant; Mr. J. Behera, Additional Government Advocate, for the Respondent

Judgement

P.K. Mohanty, J.—The petitioner "Durga Films & Traders (P) Ltd." assails the order of the District Magistrate, Cuttack dated 8-6-1994 refusing reduction of number of seats in its Cinema Hall with effect from the date of application and for exemption of entertainment tax in view of the reduced seat, while allowing reduction from the date of passing of the order under Annexure-7. The prayer of the petitioner is that, it should be allowed reduction in the sitting capacity with effect from 11-9-1989, the date of first application and for quashing the Certificate Case Nos. 41 and 42 of 1994 for realisation of arreat entertainment taxes.

2. The short fact of the petitioner''s case is that it is a private limited company engaged in business of exhibition of films in its hall "Durga Talkies" at Cuttack. On 11-9-1989, it made an application to the District Magistrate, the Licensing Authority under the Orissa Cinemas (Regulation) Act, 1954 for allowing reduction of the sitting capacity from 1199 seats to 850 seats, but the Licensing Authority did not accept such proposal to reduce the sitting capacity vide letter dated 7-11-1989 (Annexure-2), indicating further that the deviation in that regard would be viewed seriously. The petitioner again on 29-12-1989 and 20-3-1991

vide Annexures 3 and 4 made further applications for reduction of the sitting capacity, but on 3-7-1992, the Magistrate in charge of judicial section informed the petitioner under Annexure-5 that any notice for addition or alteration in the show cause should be accompanied by complete plans, elevations and sections and specification of the works proposed to be executed, drawn up in duplicate in the manner prescribed in Rule 8 in accordance with Orissa Cinema Regulation Rules, 1964 (Rule-15 (2)) and therefore it may submit fresh proposal enclosing required plans etc, as required under the Rules. Petitioner states that in response to the aforesaid letter, it intimated the details of the number of seats to be reduced and informed that for reduction of the sitting capacity, only the number of chairs are to be reduced and all other fittings and, affixtures would remain unchanged and therefore as per the provisions of law, the detailed particulars are not necessary. In spite of repeated requests, the District Magistrate having not considered the prayer, it moved this Court in O. J. C. No. 3505 of 1993 and this Court disposed of the writ application by directing the District Magistrate to consider the case of the petitioner for allowing reduction in the sitting capacity and for considering as to whether the relief can be granted from the date of application.

3. The District Magistrate Cuttack vide the impugned order dated 8-6-1994 allowed reduction of sitting capacity from 1199 to 837 with effect from the date of the order subject to clearance of the entertainment tax of approved seats of 1199 till that date, a copy whereof is Annexure-7. The petitioner claims that the Cinema Houses have been adversely affected by introduction of the V. C. R. , V. C. P., Star T.V. and G. T. V. and it becomes extremely difficult to run the cinema houses without reducing the sitting capacity since the number of visitors to the cinema hall was reducing day by day.. The sale of video rights by the distributors/ producers of newly released movies, added to their miseries, substantially and effects the business of cinema halls, for which it became necessary to reduce the sitting capacity to meet the running expenses and did not like to maintain the chairs unnecessarily. The petitioner alleges that even though some seats are remaining vacant in each show, it is liable to pay taxes on the total number of seats including those vacant seats.

4 The petitioner''s specific case in paragraph-14 of the writ petition is that it could not reduce the number of seats from the date of its application due to the order of the District Magistrate dated 17-11-1989 (Annexure-2) even though the seats are lying vacant in every show and therefore it is not liable to pay entertainment tax on the existing seats and the reduction in sitting capacity should be given effect to from the date of his first application and not from the date of the order of the District Magistrate, as directed. It is stated that the certificate of clearance of entertainment tax as directed has no nexus with the reduction of the sitting capacity since there is a separate forum for recovery of the entertainment dues and therefore the order of the District Magistrate allowing reduction of the sitting capacity subject to payment of arrear entertainment taxes is ex facie illegal and unsustainable. Petitioner has also

assails the demand raised by the Commercial Tax Officer, Cuttack-I West Circle towards entertainment tax for the period from April, 1989 to 31-3-1993 of Rs. 16,19,837/- basing upon the total number of seats, which, according to the petitioner is illegal and unsustainable in law, since it is liable to pay entertainment tax on the basis of the reduced seats with effect from the date of application. Petitioner has moved the Commissioner Commercial. Taxes as against the order of the Commercial Tax Officer in an appeal, which is said to be pending and in the meantime, the Commercial Tax Officer has initiated proceeding under the O.P D.R. Act.

5. The opp. party No. 1 has filed a comprehensive counter affidavit denying the allegations and claim made by the petitioner, inter alia, on the ground that the application of the petitioner dated 11-9-1989 was rejected by the Licensing Authority and was duly intimated to the petitioner by letter dated 17-11-1989 and it was directed not to reduce the sitting capacity. It is stated that in view of the provision of Rule 15(2) read with section 24(2) of the Orissa Cinema (Regulation) Rules, 1964, application without accompanied with complete plans elevations and other specifications of the work proposed to be executed was not entertainable inasmuch as the reduction of sitting capacity with retrospective effect could not be considered as there was no evidence either documentary or oral that the petitioner has reduced the sitting capacity in the Cinema Hall with effect from the date of application i. e. 28-11-1989. Reduction of the sitting capacity without the consent of the Licensing Authority would ; he a violation of the provisions laid down under Rule 15. It is urged that sitting capacity having been allowed to be reduced from 8-6-1994, the petitioner was liable to pay entertainment tax taking into account the total seats fixed till 8-3-1994, the date of the order and therefore the order of the Licensing Authority cannot be termed as illegal. The averment with regard to the plea that there was substantial reduction in number of visitors and that the seats remains vacant have been strongly denied and it has been asserted that there has been no reduction of seats as alleged. Rather as per the report, the seats continued to be 1199 even after the order of the Licensing Authority for such reduction, at least till 1995-96 as per the report of Inspection submitted by the P. H. Division, copy of which is Annexure-A. It is further asserted that the petitioner cannot be allowed reduction of seats with retrospective effect since the entertainment tax is assessed on the basis of the sitting capacity and therefore it was liable to pay the entertainment tax upto and till the date the sitting capacity is reduced. It is further stated that there is no provision for reduction of the sitting capacity inasmuch as the question of allowing reduction with retrospective effect does not arise in the facts and circumstances of the case. The petitioner has filed a rejoinder affidavit more or less reiterating the stand taken in the writ petition.

7. u/s 3 of Orissa Cinema (Regulation) Act, 1951 (hereinafter called as "the Act"), exhibition of a cinema needs a licence subject to the conditions and restrictions of such licence. The District Magistrate is the Licensing Authority u/s 4 of the Act and he is to be satisfied before issuing the licence that the Rules

made under the Act have been substantially complied with and adequate precautions have been taken in the place in respect of which the licence is to be given, to provide for the safety of persons in attending exhibitions therein. Section 7 of the Act provides for penalties for contravention of the Act. Rule 6 of the Orissa Cinema (Regulation) Rules, 1964 (hereinafter called as "the Rules") prescribes procedure for granting the licences. Rule 15 prescribes that "No addition to or alteration of any portion of any premises licensed u/s 5 of the Act, necessitated by fire, any other calamity or any other cause shall be made without the sanction of the licensing authority." Rule 25 prescribes as to how the sitting capacity shall be provided in the cinema hall. Under Rule 24, the number of persons to be admitted into any part of the auditorium shall not exceed the number of prescribed limit in the licence for that part of the sitting.

8. Undisptedly, the petitioner obtained a licence for exhibiting the cinema in the ball called "Durga Talkies" with a sitting capacity of 1199 and it made an application to the Licensing Authority, the District Magistrate, Cuttack for reduction in the sitting capacity, by its application dated 11-9-1989 and that was rejected by order dated 17-11-1989 under Annex-ure-2. The petitioner made further representations on 29-12-1989 and 2-3-1991, but the Licensing Authority vide letter dated 3-7-1992 under Annexure-5 informed the petitioner to submit a fresh proposal enclosing the required plans and to to discuss with the authority for the purpose, but the petitioner took the stand that for reduction of the sitting capacity only the chairs are to be reduced and other fittings and affixtures shall remain unchanged and as such, it is not necessary to submit the plans for reduction of the sitting capacity. The petitioner approached this Court in O. J. C. No. 3505 of 1993 for a direction to allow reduction, but the petition was disposed of with a direction to the District Magistrate to consider the case of the petitioner and to consider whether the relief can be granted from the date of application. The District Magistrate, Cuttack by order dated 8-6-1994 (Annexure-7) while observing that there is no provision in the Act and the Rules thereunder to accept such reduction of seats, in view of the direction of this Court in the aforesaid writ application, considered the matter afresh and by order dated 8-6-1994 (Annexure-7) accepted the redaction of seats from 1199 to 837 with effect from the date of the order subject to clearance of entertainment tax of approved seats till date. The prayer of the petitioner for reduction of the seats with retrospective effect from the date of the application and for exemption of entertainment tax for that period was rejected.

9. The petitioner has taken a specific stand that due to the order of the District Magistrate-cum-Licensing Authority dated 17-11-1989, it could not reduce the number of seats from, the date of its application even though the seats were lying vacant in every show. The Licensing Authority has also pleaded in the counter that on inspection by the P. H Division during the year 1995-96, 1199 seats were found physically existing in the hall, even after the order of the District Magistrate allowing reduction-under Annexute-7. If the petitioner had not reduced the number of seats at any point of time either prior to or even after the

order dated 8-6-1994 and it has not pleaded nor proved that in fact the seats were removed from the hall, rather it is the specific plea that it could not reduce the seats because of the order of the District Magistrate, the question of allowing the petitioner, reduction of seats with retrospective effect could not have been accepted by the Licensing Authority nor can we entertain, such a plea at this stage. Rule 15(1) of the Rules prohits addition or alteration of any portion of any premises licenced u/s 5 of the Act without sanction of the Licensing Authority. Rule 15(3) prohibits commencement of any addition and alteration work until consent of Licensing Authority is obtained. It further follows that before the Licensing Authority gives consent/permission for addition or alteration, no such work can commence as such question of granting permission with retrospective effect is impermissible in law. Moreover, admittedly, the petitioner has not effected the reduction of seats on its own showing and thus, the question of allowing the prayer from the date of application does not arise for consideration. The order of the Licensing Authority allowing reduction in the number of seats has therefore to take effect from the date, the seats were physically reduced to the required number i. e. 837 thereafter. In that view of the matter, we are unable to accept the contention of the learned, counsel that the order should have been passed by the Licensing Authority allowing reduction in the number of seats from the date of application.

10. In view of what we have held earlier that the reduction in the number of seats from the date of application is impermissible, the contention of the learned counsel that the entertainment tax ought to have been assessed on the basis of reduced number of seats from 11-9-1989 (the dace of application) and that the certificate proceeding Nos. 41 and 42 of 1984 under the O.P.D.R. Act for arrears are illegal and liable to be quashed has to be rejected outright. It is the specific case of the petitioner that as against the order of assessment, it has preferred an appeal, which is pending and in the meantime Certificate proceeding has been started. If the Certificate proceeding has been started for realisation of arrear tax and the appeal is pending before the appellate authority as against such order of assessment, it is for the petitioner to work out its remedies in the appropriate forum.

11. The learned counsel lastly submitted that the Licensing Authority, while allowing the prayer of the petitioner for reduction of the number of seats in the Cinema hall from the date of the order, could not have imposed a condition that it shall be subject to the condition that, the petitioner will clear up the arrear entertainment tax till that date on the basis of 1199 seats. According to the learned counsel, the form for imposition and realisation of tax is the Commercial ''Tax Authorities and, therefore, in absence of any specific Rule authorising the authorities to impose such a condition, it is illegal and arbitrary. We find force in the submission. The Licensing Authorities could not have directed for clearance of the arrear entertainment tax as a condition precedent for reduction of seats as has been held in Sarala Enterprisers Vs. State of Orissa and Others, . In that view of the matter, the coddition in the order dated 8-6-1994 of the District

Magistrate, Cuttack that it is subject to clearance of arrear entertainment tax is not sustainable in law and has to be quashed.

The writ application is accordingly disposed of.

P.C. Naik, J.

12. I agree.

13. Application disposed of.

